IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No.40 of 2005
Date of Decision 18.9.2007

Harbans Lal and another

….Appellants

Vs.

Pardip Kumar and others

…. Respondents

Present: Mr.Manohar Dadwal, Advocate for the appellants.

Mr.R.S.Budhwar, for the respondents.

Vinod K.Sharma, J. (Oral).

This second appeal against order has been filed against the judgment dated 23.5.2005 passed by the learned Additional District Judge, Hoshiarpur vide which the compromise decree passed by the learned trial Court was ordered to be set aside and the case was remanded to the trial Court for adjudication on the question of 'Will' dated 3.1.1989 and thereafter to consider the compromise Ex CI.

The plaintiff-appellant-Harbans Lal had filed a suit for declaration to the effect that the plaintiff and defendant Nos.1 and 2 were joint owners in possession in equal shares, in respect of land earlier owned by Mansa Ram situated in village Dharmpur. He also challenged the mutation of inheritance No.1323 sanctioned in the name of plaintiff and all the defendants in equal shares to be wrong and liable to be set aside. Consequential relief of injunction was also claimed for restraining the respondents from transferring, in any manner, any specific part of the suit land or from cutting or removing the trees from the suit land. During the pendency of the suit, the parties entered into a compromise, which was

placed on record as **Ex.C-1** and the suit was disposed of in terms of the said compromise.

Respondent–defendants No.1 and 2 filed an appeal against the decree passed by learned trial Court on the basis of compromise on the plea that the said compromise was void and not binding upon the rights of defendant No.2 as he was not a party to the said compromise. Though there is a bar on filing an appeal against the compromise decree, however, the said appeal was entertained as admittedly respondent-defendant No.2 was not a party to the said compromise. The learned lower appellate court came to the conclusion that one of the issues regarding 'Will' was material issue and any decision on the said issue was likely to affect the rights of the parties in the suit. However, the appeal was entertained primarily on the ground that compromise was not lawful. The relevant Order XXIII, Rule 3, 3A & 3B of the Code of Civil Procedure reads as under:-

> "3. Compromise of suit
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> Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit:
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> PROVIDED that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the

question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation : An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

Provided that the hearing of a suit shall proceed and no adjournment shall be granted in it for the purpose of deciding whether there has been any adjustment or satisfaction, unless the Court for reasons to be recorded in writing, thinks fit to grant such adjournment, and provided further that the judgment in the suit shall not be announced until the question of adjustment or satisfaction has been decided:

Provided further that when an application is made by all the parties to the suit, either in writing or in open Court through their Counsel, that they wish to compromise the suit, the Court may fix a date on which the parties or their Counsel should appear and the compromise be recorded, but shall proceed to hear those witnesses in the suit who are already in attendance, unless for any other reason to be recorded in writing, it considers it impossible or undesirable to do so. If upon the date fixed no compromise has been recorded, no further adjournment shall be granted for this purpose, unless the Court, for reasons to be recorded in writing, considers it highly probable that the suit will be compromised on or before the date to which the Court proposes to adjourn the hearing."

3A. Bar to suit

No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

3B. No agreement or compromise to be entered in a representative suit without leave of court

(1) No agreement or compromise in a representative suit shall be entered into without the leave of the court expressly recorded in the proceedings; and any such agreement or

compromise entered into without the leave of the court so recorded shall be void.

(2) Before granting such leave, the court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation : In this rule, "representative suit" means,--

(a) a suit under section 91 or section 92,

(b) a suit under rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit."

A reading of the above rules, shows that before passing a consent decree on the basis of compromise, the Court has to be satisfied that the suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties.

Admittedly, in the present case, all the parties have not signed the compromise deed therefore, the same could not be said to be lawful or valid so that any compromise decree on the basis of the said decree could be passed. This view of mine finds support from the judgment of Hon'ble Supreme Court in the case of **Banwari Lal vs. Smt. Chando Devi, 1993 (Suppl.) CCC 214** wherein, Hon'ble Supreme Court has been pleased to hold as under:-

"The learned counsel appearing for the respondent took a stand that the High Court was justified in taking the view that the suit had been simply withdrawn by the plaintiff-appellant under Rule 1 of Order XXIII and it had not been compromised in terms of Rule 3 of the said Order XXIII; as

such there was no occasion for the appellant to file an application for recall of the said order and for restoration of the suit in question for being heard on merit. From the copy of the petition which was filed on 27.2.1991 it appears that the terms and conditions of settlment and agreement had been mentioned saying that both parties had entered into a compromise because of which the plaintiff-appellant had thereafter no connection with the disputed land and defendant-respondent shall be deemed to be in possession and the owner of the said disputed land. The prayer made in the said petition also says that the compromise may be ordered to be accepted. On the basis of that petition as already mentioned above, the Court passed an order saying that the compromise had been accepted. In the order it has been mentioned that the suit of the plaintiff be dismissed as per compromise deed Ex. C. In view of the aforesaid facts and circumstances, it is difficult to hold that by order dated 27.2.1991 the Court allowed the suit to be withdrawn in terms of Rule 1 of Order XXIII. The order on face of it purported to dismiss the suit of the plaintiff on basis of the terms and conditions mentioned in the petition of compromise. As such, the validity of that order has to be judged treating it to be an order decreed to have been passed in purported exercise of the power conferred on the court by Rule 3 of Order XXIII of the Code. The learned Subordinate Judge should not have accepted exercise of the said petition of compromise even if he had no knowledge of the fraud alleged to have been practised on the appellant by his counsel, because admittedly the petiton of compromise had not been signed either by the respondent or his counsel. This fact should have been discovered by the Court. In the case of Gurpreet Singh v. Chatur Bhuj Goel, AIR 1988 SC 400, it has been said:-

> Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a

> completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The Court must therefore insist upon the parties to reduce the terms into writing."
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> The requirement of the petiton of compromise being signed by the parties concerned has been considered also in the case of Byram Pestonji Gariwala v. Union Bank of India, AIR 1991 SC 2234. IT appears the attention of learned judges was not drawn to the aforesaid case of this Court in Gurpreet Singh v. Chatur Bhuj Goel, (supra)."

Mr.Manohar Dadwal, learned counsel appearing for the appellants has challenged the impugned order passed primarily on the ground that respondent-defendant No.2 was proceeded against ex parte in the trial Court and therefore, was not contesting respondent and thus he was not bound by the compromise. In support of this contention, he placed reliance on the judgment of Hon'ble Delhi High Court in case of **Krishan Mohan Singh vs. Sri Chand Gupta, 1993 (2) RCR (Civil) 141,** wherein, Hon'ble High Court has been pleased to hold as under:-

> "Learned counsel for the respondent has also argued that the compromise has not been signed by Jaswant Singh and thus as all the parties have not signed the compromise, the same could not be given effect to. There is no merit in this contention. No adverse order was being made on the basis of the compromise against Jaswant Singh, so even if Jaswant Singh, who was not contesting the matter, had not signed the compromise, it would not mean that the compromise cannot be enforced between the contesting parties."

On consideration of the matter, I find no force in the contention raised by the learned counsel for the appellants. Hon'ble Delhi High Court was considering the case where rights of the person who was not signatory to the compromise, were not in dispute or affected by the said compromise. It was in that situation that Hon'ble Delhi High Court was pleased to hold that compromise between the contesting parties was binding. As already observed, in the present case, rights of defendant No.2 were in issue and in absence of his signing the compromise, no valid decree could have been passed on the basis of compromise.

The order passed by the learned trial court was contrary to the provisions of Order XXIII Rule 3 of the Code of Civil Procedure and therefore, learned lower appellate Court was justified in setting aside the decree and remanding the case back to learned trial Court for adjudication on the question of 'Will'. However, once the learned lower appellate Court had held that the compromise deed was not valid and lawful, it was not open to the Court to have restricted the adjudication on the 'Will' alone. The whole of the case is to be tried afresh by the learned trial Court after letting the parties to lead their evidence on all the issues.

This appeal is accordingly disposed of with a direction to the trial Court to decide the matter in accordance with law on merit, without taking note of the compromise deed Ex C-1.

[Vinod K.Sharma]
Judge

18.09.2007
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